IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.611 of 2004

Mr.V.Senthilkumaran

.. Petitioner/Plaintiff/Petitioner

Vs

Mr.C.Santhoshkumar .. Respondent/Defendant/Respondent

Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order passed in I.A.No.676/2003 in O.S.No.- of 2003 on the file of the learned Principal Sub-Judge, Virudhachalam dated 23.06.2003.

For Petitioner : Mr.P.V.Rangarajan
For Respondent [served]: No appearance

ORDER

The above Civil Revision Petition has been filed against the order dated 23.06.2003 in I.A.No.676/2003 in un-numbered O.S.No.- of 2003 passed by the learned Principal Sub-Judge, Virudhachalam.

2.The civil revision petitioner herein is the plaintiff in un-numbered O.S.No.- of 2003 on the file of the learned Principal Sub-Judge, Virudhachalam.

3.The civil revision petitioner/plaintiff has filed I.A.No.676/2003 praying for condonation of delay of 565 days in representing the plaint. Admittedly, the suit is filed for recovery of sum of Rs.95,193.25 against the defendant and the revision petitioner/plaintiff/petitioner has affixed deficit Court fee while filing the plaint before the Trial Court. It appears that 15 days time was granted by the Trial Court for paying the deficit Court fees. In the affidavit in I.A.No.676/2003 filed by the revision petitioner/plaintiff/petitioner, it is averred that the revision petitioner was not well and he could not get money from outside also and therefore, he was not in a position to pay the deficit Court fee and to represent the plaint before the Trial Court. In that process there is a delay of 565 days in representing the plaint before the Court below.

4.The respondent/defendant/respondent has filed a counter inter-alia stating that the reason assigned for 565 days delay for representing the plaint is not acceptable and that the petition is to be dismissed with cost.

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5.The learned Principal Sub Judge, Virudhachalam, in his order dated 23.06.2003, passed in I.A.No.676/2003 in un-numbered O.S.No.- of 2003 has observed that the revision petitioner/plaintiff/petitioner has not furnished details in the affidavit like the date on which the plaint was filed, on what date the said plaint was returned and the date of representation etc., and came to the conclusion that the reason assigned for condonation of delay in representing the plaint is not to be accepted and accordingly dismissed the said application.

6.As against the said orders passed by the learned Principal Sub Judge, Virudhachalam, I.A.No.676/2003 in un-numbered O.S.No.- of 2003 dated 23.06.2003, the revision petitioner/plaintiff/petitioner has preferred this civil revision petition.

7.It is an accepted principle that in condonation of delay matters, a liberal approach is to be made by law courts. It is to be remembered that refusing to condone the delay in any matter can result in a meritorious matter being thrown out at the initial stage and cause of justice being defeated. Per contra, the maximum that can happen is that the cause would be decided on merits after hearing the parties, when the delay is condoned. In these matters a pedantic approach should not be made and when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay. As a matter of fact, a party does not stand to benefit by adopting dilatory tactics. On the other hand, he runs a serious risk. It is to be pointed out that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and as expected to do so.

8.Learned counsel for the revision petitioner/plaintiff/petitioner relied on the decision reported in 1978 [1] SCC 483 between INDIAN STATISTICAL INSTITUTE V. M/S.ASSOCIATED BUILDERS AND OTHERS, wherein it is observed as follows:-

> "Civil Procedure Code [Act 5 of 1908] - Section 148 - Power of Court to excuse delay in paying Court fee.
>
> Limitation Act, 1963 - Section 5 - Delay in re-presentation of petition after rectifying defects pointed out by Court - Jurisdiction of Court.
>
> Practice - Objections to award filed in time but with defects - Whether could be considered as not filed at all."

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9.He also relied on 2002 [3] CTC 22 between BHUVANESWARI AND R.ELUMALAI wherein, it is held as follows:-

> "Code of Civil Procedure, 1908, sections 151,149 and 148- Plaint filed for recovery of money returned for certain compliances - Plaintiff represented papers with delay of 457 days – plaintiff filed petition under section 151 to condone delay in representation and also application for condoning delay in payment of deficit Court fee - Both application were filed under section 151 of Code of Civil Procedure – Order passed by Court granting time for representation of plaint is administrative order and not judicial order – Petition to condone delay in representation need not be under section 148 and could be under 151 of code of Civil Procedure – Order of Trial Court refusing to condone delay set aside and delay condoned with direction that plaintiff is not entitled to interest for period of delay if he succeed in suit.
>
> Practice and procedure:- Mere quoting of wrong provisions of law will not entail in dismissal of petition.
>
> Delay in presentation:- Order passed by Court returning paper for compliance of certain returns is administrative order and not judicial order."

10.On the side of the revision petitioner/plaintiff/petitioner, reliance was placed on AIR 1987 SC 1353 between, COLLECTOR, LAND ACQUISITION, ANANTNAG V. MST.KATIJI AND OTHERS, wherein it is held that:

> "[B]Limitation Act [36 of 1963], S.5 – Condonation of delay – Courts should adopt liberal approach – Reasons for adopting such approach stated."

11.Learned counsel for the revision petitioner/plaintiff pressed into service, another decision reported in 2000 AIHC 3227 between MEHAR SINGH ALIAS MEHAR LAL AND OTHERS V. STATE OF H.P., wherein it is observed that 'it cannot be disputed that as per section 149 C.P.C., the Court of law has discretion, at any stage to allow an individual to make good the deficit court fee prescribed for any document by the law and on such payment, the said document shall for the same validity and effect as if such fee was paid in the first instance. Discretion is to be exercised by a Court of law in accordance with established judicial principles and the same cannot be claimed as a matter of right. The discretion in this regard should be exercised liberally in favour of a party except in cases of mala fide or similar reasons resulting in great injustice to the opposite side. It cannot be gain said that as per section 149 CPC there is a power on the High Court to exercise the same in order to do justice to a party where the failure has occasion not due to his fault'.

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12.In 1993 TNLJ 375 between Y.CUSBAR V. K.SUBBARAYAN it is held that 'any delay in representation matter, court has to take care to see that justice does not suffer in such cases and even if there is undue delay in representation it can be compensated by awarding costs'.

13.As far as the present case is concerned, this court is of the considered view that the details like [1]on what date the plaint was filed; [2]on what date it was returned; [3]on what date it was represented etc., were not mentioned in the affidavit by the revision petitioner/plaintiff/petitioner in I.A.No.676/2003, as found by the Court below are not correct and the crux of the matter to be looked into by the court is whether delay of 565 days in representing the plaint is to be condoned or not and to find out whether any cause much less a sufficient cause was made out by the revision petitioner/plaintiff/petitioner.

14.In as much the term 'sufficient cause' requires liberal approach, this Court is of the considered view that the present Civil Revision Petition needs to be allowed since substantial justice is to be preferred so that the matter is not thrown out at the early stage itself and also to avoid any injustice and therefore, the reasons assigned in the affidavit by the revision petitioner that he could not get money from outside, not well etc., are accepted by this court. Strictly speaking, delay in representation matters are between the applicant and the Court and a liberal views are to be taken in condonation of delay matters.

15.In that view of the matter, by taking a liberal approach, this court allows the Civil Revision Petition and the orders passed by the learned Principal Sub Judge in I.A.No.676/2003 in un-numbered O.S.No.- of 2003 is hereby set aside in the interest of justice. However, there shall be no order as to costs. The Civil Revision Petitioner/plaintiff/petitioner is granted three weeks time from the date of receipt of a copy of this order to pay the deficit court fee before the trial court.

ap

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.The Principal Sub Judge,
Viruthachalam.
2.The Record Keeper, V.R.Section,
High Court, Madras.
+1 cc to Mr.P.V.Rangarajan, Advocate Sr.No.71685.

SP(CO)
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